

Schmitz, Patsy

INJURY (RCW 51.08.100)

"Physical conditions"

The deflation of a breast implant caused by a blow in the course of employment constitutes an industrial injury and the worker is entitled to an implant replacement to permit her to regain her pre-injury appearance.*In re Patsy Schmitz*, BIIA Dec., 68 429 (1986) [dissent]

PROPERTY DAMAGE AS A RESULT OF "INDUSTRIAL ACCIDENT" (RCW 51.36.020)

Breast implant

The replacement of a breast implant is not covered by RCW 51.36.020. Rather, a worker is entitled to this procedure as treatment for the residuals of the industrial injury which deflated the original implant.*In re Patsy Schmitz*, BIIA Dec., 68 429 (1986) [dissent]

Scroll down for order.

1 It is clear that the only damage caused by the traumatic incident was to the left breast implant.
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3 No other physical harm resulted, as the claimant sustained no apparent abrasions, bruises or external
4 punctures as a result of the incident.
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6 We are aware that the legislature did not include breast implants within its listings IN RCW
7 51.36.020 of artificial substitutes covered for repair or replacement because of an industrial accident
8 thereto. The specific devices covered under subsection (3) of that section include artificial limbs, eyes,
9 or teeth, and subsection (4) covers hearing aids, eyeglasses or lenses. Nevertheless, to our thinking,
10 the blow caused damage to more than just an artificial object. Certainly, the incident caused a change
11 in the physical appearance of the claimant's left breast. While the record does not establish that
12 deflation of her implant posed a particular health hazard, it was at the very least disfiguring. Also, we
13 can infer that deflation of such implant would have caused a change in the internal structure of the
14 breast since the implant would no longer be supportive of the underlying chest musculature. Clearly
15 there was a change in the claimant's physical condition as a result of the December 16, 1983 incident.
16 Inasmuch as a change did occur, the result of the incident would therefore qualify as an industrial
17 injury under RCW 51.08.100. It is our understanding of the Act's intent, relating to the provision for
18 medical care, that injured workers be returned as closely as possible to their pre-injury state. In order
19 to do this, the claimant had to be provided with a new left breast implant to permit her to regain her
20 pre-injury appearance.
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28 In short, we do not agree with the employer's rationale that damage occurred only to an artificial
29 object. Unlike those devices listed in RCW 51.36.020, the only way to repair or replace a breast
30 implant is to surgically enter the breast itself. Since this need for surgery was the direct result of the
31 trauma causing damage to the original implant, the self-insurer must be responsible for the cost of this
32 surgery. Additionally, as noted above, the rupture of the implant following the December 16, 1983
33 incident did result in physical changes to the claimant's body. It would thus be incorrect to state that
34 the incident caused nothing more than damage to an artificial object. We believe the Department
35 properly allowed the claim as framed by its order of June 11, 1984.
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40 After consideration of the Proposed Decision and Order and the Petition for Review filed
41 thereto, and a careful review of the entire record before us, we are persuaded that the Proposed
42 Decision and Order is supported by a preponderance of the evidence and is correct as a matter of law.
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1 The proposed Findings, Conclusions and Order are hereby adopted as this Board's final
2 Findings, Conclusions and Order and are incorporated herein by this reference.

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4 It is so ORDERED.

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6 Dated this 24th day of February, 1986.

7 BOARD OF INDUSTRIAL INSURANCE APPEALS

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9 /s/
10 GARY B. WIGGS Chairperson

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12 /s/
13 FRANK E. FENNERTY, JR. Member

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15 **DISSENTING OPINION**

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17 I dissent from the Board majority's conclusion that this claim for replacement of the claimant's
18 cosmetic left breast implant is allowable as an industrial "injury" under RCW 51.08.100. There was no
19 "physical condition" resulting from the claimant's incident of December 16, 1983, i.e., no damage to
20 the worker's person, and thus no industrial injury within the meaning of the Act.

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22 Because damage to an artificial appliance or prosthesis is not included in the basic definition of
23 injury, the legislature has specifically addressed the circumstances under which such devices may be
24 repaired or replaced. Subsections (3) and (4) of RCW 51.36.020. Nowhere in these provisions or
25 elsewhere in the Act is there any authority, either specifically or inferentially, for replacement of a
26 cosmetic breast implant damaged or deflated in the course of employment.

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28 RCW 51.32.260 gives further illustration of the legislative intent to extend the scope of the Act's
29 "injury" coverage, beyond that contemplated in the basic injury definition, only in carefully and
30 specifically prescribed situations. It provides:

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32 "Workers otherwise entitled to compensation under this title may also
33 claim compensation for loss of or damage to the worker's personal
34 clothing, footwear or protective equipment resulting from the industrial
35 accident or incurred in the course of emergency medical treatment for
36 injuries."

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38 Replacement of the described items is possible only when the worker is "otherwise entitled to
39 compensation" under the Act, i.e., injured and given treatment or other benefits. Again, no provision
40 is made for cosmetic devices such as breast implants.

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42 The majority, in reaching its conclusion to allow coverage, feels it necessary to emphasize the
43 altered appearance of claimant's breast by the deflated implant, and states that "we can infer" that
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1 such deflation would have caused a "change in the internal structure of the breast." This statement is
2 purely an inference, without evidentiary support in the record.
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4 No amount of rhetoric alters the fact that the damage here was not to the worker's person, but
5 rather to an artificial breast implant. Replacement of a purely cosmetic and non-therapeutic breast
6 augmentation implant is not, in my opinion, a benefit provided under the present terms of the
7 Washington workers' compensation law. I would reverse the Department's allowance order of June
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9 11, 1984.
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11 Dated this 24th day of February, 1986.
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13 /s/
14 PHILLIP T. BORK Member
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